

8/8/23, 2:45 PM

The Law Offices Of Avrum J. Rosen, PLLC Mail - FW: Bay Point/Brickchurch - DIP Account



Avrum Rosen &lt;arosen@ajrlawny.com&gt;

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**FW: Bay Point/Brickchurch - DIP Account**

1 message

**Mathew Kabatoff** <mkabatoff@ltbholding.com>

Tue, Aug 8, 2023 at 10:02 AM

To: Avrum Rosen &lt;arosen@ajrlawny.com&gt;

Cc: Louise Blouin &lt;lt@ltbholding.com&gt;

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**From:** Allerding, John <[John.Allerding@thompsonhine.com](mailto:John.Allerding@thompsonhine.com)>**Sent:** Friday, July 21, 2023 14:10**To:** Camisha Simmons <[camisha@simmonslegal.solutions](mailto:camisha@simmonslegal.solutions)>; Messinger, Brett L. <[BLMessinger@duanemorris.com](mailto:BLMessinger@duanemorris.com)>; Mathew Kabatoff <[mkabatoff@ltbholding.com](mailto:mkabatoff@ltbholding.com)>**Cc:** Charles Andros <[charlesandros@baypointadvisors.com](mailto:charlesandros@baypointadvisors.com)>; John Isbell <[john@jfi-law.com](mailto:john@jfi-law.com)>; Greg Jacobs <[gregjacobs@baypointadvisors.com](mailto:gregjacobs@baypointadvisors.com)>; Kevin Frericks <[kevinfrericks@baypointadvisors.com](mailto:kevinfrericks@baypointadvisors.com)>**Subject:** RE: Bay Point/Brickchurch - DIP Account

Hi Camisha,

To be clear, Bay Point has not transferred ultimate ownership of the shares. Bay Point has taken actions to become the registered shareholder under the corporate records. The prior shareholders retain their beneficial interest in the shares, subject to the terms of the DIP Loan Documents. I just wanted to make sure that we were on the same page there.

We have sent you the documentation showing that the transfer of the registered ownership of the shares and the replacement of the officers and directors was legal, valid, and binding. If you have a good faith basis for challenging the actions taken, then we can certainly get a comfort order from the bankruptcy court. In that case, I suggest that we ask the Court for an emergency hearing next week (the Court appeared willing to give us some time on the docket next Friday before ultimately deciding that it could decide the plan/dismissal order by letter). This issue may impact what we submit in our joint letter on Friday – so hopefully we can get this resolved before that time.

Thanks,

John

**John C. Allerding | Thompson Hine LLP**

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3900 Key Center | 127 Public Square | Cleveland, Ohio 44114

**Atlanta:** 404.407.3676 | **Cleveland:** 216.566.5748 | **Mobile:** 216.402.9953

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**From:** Camisha Simmons <[camisha@simmonslegal.solutions](mailto:camisha@simmonslegal.solutions)>

**Sent:** Friday, July 21, 2023 1:28 PM

**To:** Messinger, Brett L. <[BLMessinger@duanemorris.com](mailto:BLMessinger@duanemorris.com)>; Allerdin, John <[John.Allerdin@thompsonhine.com](mailto:John.Allerdin@thompsonhine.com)>; Mathew Kabatoff <[mkabatoff@ltbholding.com](mailto:mkabatoff@ltbholding.com)>

**Cc:** Charles Andros <[charlesandros@baypointadvisors.com](mailto:charlesandros@baypointadvisors.com)>; John Isbell <[john@jfi-law.com](mailto:john@jfi-law.com)>; Greg Jacobs <[gregjacobs@baypointadvisors.com](mailto:gregjacobs@baypointadvisors.com)>; Kevin Frericks <[kevinfrericks@baypointadvisors.com](mailto:kevinfrericks@baypointadvisors.com)>

**Subject:** RE: Bay Point/Brickchurch - DIP Account

### **CAUTION EXTERNAL EMAIL**

John,

Simmons Legal PLLC is counsel to the Debtor Brickchurch Enterprises, Inc. and not Aberdeen. With respect to the Debtor Brickchurch Enterprises, Inc., Bay Point has filed a notice with the Court purporting to a certain change of ownership and control of Brickchurch. We are sort of in a gray area without a Court Order or other document showing that the transfer of ownership and control is legal, valid and enforceable. Usually, parties obtain a comfort order from the bankruptcy court regarding these types of matters. We need to discuss how we move things forward.

**Camisha L. Simmons** |Managing Member

Simmons Legal PLLC

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**From:** Messenger, Brett L. <BLMessenger@duanemorris.com>

**Sent:** Friday, July 21, 2023 12:23 PM

**To:** Allering, John <John.Allering@thompsonhine.com>; Camisha Simmons <camisha@simmonslegal.solutions>; Mathew Kabatoff <mkabatoff@ltbholding.com>

**Cc:** Charles Andros <charlesandros@baypointadvisors.com>; John Isbell <john@jfi-law.com>; Greg Jacobs <gregjacobs@baypointadvisors.com>; Kevin Frericks <kevinfrericks@baypointadvisors.com>

**Subject:** RE: Bay Point/Brickchurch - DIP Account

Adding Mathew.

**Brett L. Messenger**

Partner

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**From:** Allering, John <John.Allering@thompsonhine.com>

**Sent:** Friday, July 21, 2023 1:18 PM

**To:** Messenger, Brett L. <BLMessenger@duanemorris.com>; Camisha Simmons <camisha@simmonslegal.solutions>

**Cc:** Charles Andros <charlesandros@baypointadvisors.com>; John Isbell <john@jfi-law.com>; Greg Jacobs <gregjacobs@baypointadvisors.com>; Kevin Frericks <kevinfrericks@baypointadvisors.com>

**Subject:** RE: Bay Point/Brickchurch - DIP Account

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Looping in Greg Jacobs of Bay Point to the below.

Thanks,

John

**John C. Allerding | Thompson Hine LLP**

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**From:** Allerding, John

**Sent:** Friday, July 21, 2023 1:17 PM

**To:** 'Messinger, Brett' <[BLMessinger@DuaneMorris.com](mailto:BLMessinger@DuaneMorris.com)>; 'Camisha Simmons' <[camisha@simmonslegal.solutions](mailto:camisha@simmonslegal.solutions)>

**Cc:** Charles Andros <[charlesandros@baypointadvisors.com](mailto:charlesandros@baypointadvisors.com)>; 'John Isbell' <[john@jfi-law.com](mailto:john@jfi-law.com)>; Kevin Frericks <[kevinfrericks@baypointadvisors.com](mailto:kevinfrericks@baypointadvisors.com)>

**Subject:** RE: Bay Point/Brickchurch - DIP Account

Brett and Camisha,

As we have previously discussed, Charles Andros is now the director and sole officer of the Debtor. As such, Mr. Andros is the only person that has authority to direct disbursements from Brickchurch Enterprises Inc.'s ("Brickchurch") and Aberdeen Enterprises Inc.'s ("Aberdeen") respective bank accounts. We have requested that you take the actions necessary to effectuate the transition of control over the DIP Account (see below). We are still waiting for your

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confirmation that this has been completed. Also, please initiate the process for transferring control over Aberdeen's bank account to Mr. Andros in his role as sole officer and director of Aberdeen.

In the meantime, Brickchurch and Aberdeen need to make certain contractual payments related to renovations and need to bring their taxes current. Bay Point has agreed to fund such payments as protective advances under the DIP Loan. However, until Mr. Andros is set up as the authorized signatory with respect to Brickchurch and Aberdeen's bank accounts, he is unable to complete the required payments on behalf of Brickchurch and Aberdeen. As such, and to avoid any harm to Brickchurch and Aberdeen, and without prejudice to Bay Point's position that Mr. Andros is the sole officer and director of Brickchurch and Aberdeen and the sole person with authority to direct any disbursements from their respective bank accounts, Bay Point and Mr. Andros have agreed to temporarily authorize the current account authorized signatories to make disbursements from the protective advance funds at the direction of Mr. Andros. Please note that this is a temporary solution meant to avoid harm to Brickchurch and Aberdeen and that this temporary authorization does not negate your, and the former officer's and director's, obligations to take actions to implement Mr. Andros as the sole authorized signatory on the Brickchurch and Aberdeen bank accounts. Please also note that this temporary authorization only applies to amounts approved by Mr. Andros in his role as sole officer and director of Brickchurch and Aberdeen.

If you have any questions, please do not hesitate to reach out.

Thanks,

John

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**From:** Allerdig, John  
**Sent:** Wednesday, July 19, 2023 4:37 PM  
**To:** 'Messinger, Brett' <[BLMessinger@DuaneMorris.com](mailto:BLMessinger@DuaneMorris.com)>; 'Camisha Simmons' <[camisha@simmonslegal.solutions](mailto:camisha@simmonslegal.solutions)>  
**Cc:** 'John Isbell' <[john@jfi-law.com](mailto:john@jfi-law.com)>  
**Subject:** Bay Point/Brickchurch - DIP Account  
**Importance:** High

Camisha and Brett,

While I understand that there may be a dispute with respect to the officers, directors, and shareholders of record for Aberdeen Enterprises, Inc. and Brickchurch Enterprises, Inc., we need to address the issue of DIP Account control. Can you please confirm that you will add Charles as an authorized signatory to the DIP Account with full authority to receive and disburse funds therefrom? If you are not willing to do this, we will need to reach out to Wells Fargo and assert Charles' control over the account. It is possible that Wells Fargo will immediately freeze the account down pending the Bankruptcy Court's decision on the issue. We are trying to avoid that situation.

Please note that it is our position that Mathew and Louise have no authority to direct any funds of the Debtor to be utilized for any purpose and their authority as authorized users on the account should be immediately terminated. If Mathew and/or Louise direct any funds to be removed from the DIP Account without Bay Point's express written consent, Bay Point will view that as an act of bankruptcy fraud and reserves its rights with respect thereto.

Thanks,

John

**John C. Allerdig | Thompson Hine LLP**

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